IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13370 of 1994

WITH

SPECIAL CIVIL APPLICATION NO.446 OF 1995

WITH

CIVIL APPLICATION NO.4849 OF 1995

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GSRTC

Versus

DL PATEL

Appearance:

1. Special Civil Application No. 13370 of 1994

MR HH JOSHI WITH VH DESAI for Petitioner No. 1

MR JS BRAHMBHATT for Respondent No. 1

MR HD DAVE AGE IN SCA NO.446/95 FOR STATE

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 04/04/2002

COMMON ORAL JUDGEMENT

Heard Mr.H.H.Joshi, learned advocate with Mr.V. H. Desai, learned advocate on behalf of the petitioner Corporation and Mr.J.S.Brambhatt, learned advocate for respondent workman, as also, Mr. H.D.Dave, learned AGP for State Authority in Special Civil Application No. 446 of 1995.

#. In Special Civil Application No.13370 / 1994, RULE has been issued by this Court on 19th December, 1994 and also granted ad-interim relief in terms of para-9[B]. Another group matter SCA No.446/95 has been admitted by this Court on 6th April, 1995 and ordered to be heard with SCA No.13370 / 1994. So far as, Special Civil Application No.13370 / 94 is concerned, petitioner Corporation has challenged the order passed by the Conciliation Officer, Valsad in Approval Application No. 55/ 93 dated 27th April, 1994, whereby the Conciliation Officer has rejected the approval application filed by the petitioner corporation under Section 33[2][b] of the Industrial Disputes Act, 1947, whereas, Special Civil Application No.446 / 95 has been preferred by the workman with prayer to implement the order passed by the conciliation officer and also sought direction for reinstatement of the petitioner workman and to pay him full backwages of interim period.

#. Learned advocate Mr.H.H.Joshi appearing on behalf of the petitioner Corporation has submitted that the conciliation officer has ignored the past record of the concerned workman who had committed in all 28 defaults for collecting the fare and not issuing the tickets to the passengers. Mr.Joshi, learned advocate has submitted that the conciliation officer has come to an erroneous conclusion that penalty imposed by the competent authority is harsh. He also submitted that the conciliation officer has no jurisdiction to consider the gravity of charge and penalty imposed by the competent authority and he has no power under Section 11-A of the Industrial Disputes Act, 1947. Mr.Joshi, learned advocate has submitted that the Conciliation Officer while deciding the approval application, has to see prima facie case or reasonable opportunity was given or not; and there should not be victimization or not, whether notice pay was paid or not; but the Conciliation Officer has no jurisdiction to consider the gravity of the charge and the penalty imposed. It is further submitted that it is the jurisdiction of the Industrial Court while exercising the powers under Section 11-A of the I.D.Act and the powers of the conciliation officer has to see that whether the authority has followed the procedure

laid down under the Act or not and whether concerned workman has been given an ample opportunity of being heard or not. If there is any lacuna in the departmental proceedings, in that case, the Conciliation Officer may not give approval and exercise his jurisdiction but in absence of any technical flow, the conciliation officer has no jurisdiction to interfere with the penalty imposed by the Corporation. Thus, the submission is, the conciliation officer has no jurisdiction to go into merits of the matter and therefore, the Conciliation Officer has no jurisdiction to pass such order. Learned Advocate Mr.Hasit Joshi has submitted that on merits, the respondent workman has committed serious misconducts recovering fares and not issued the tickets and thereby misappropriated the amount of the corporation, so also, Rs.62.65 ps was found in excess in cash box and therefore, in such situation, punishment of dismissal is reasonable and proper, which cannot be disturbed by the conciliation officer. Learned advocate Mr.Hasit Joshi also submits that there is no lacuna in the departmental inquiry and in absence of technical flow, the conciliation officer had no jurisdiction and discretion to exercise such powers and therefore the conciliation officer had no right to interfere with the punishment. It is also submitted that the story put forth by the concerned workman is concocted. Once in his defence, the workman says that the excess amount which has been found from the cash box is the amount which has been given to him by his relative but at no point of time, when at the time of recording his statement by the Checking Squad he has not made this statement before them and therefore, the defence put forward by the workman is contradictory and it is not required to be believed. Therefore, the conciliation officer has committed error in believing such theory and / or defence of the respondent workman. Learned advocate Mr.Hasit Joshi also submits that the reviewing authority has rightly exercised powers and imposed the punishment. Mr.Joshi, learned advocate for petitioner has mainly relied on observations in para 19 and 28 of decision in case of M/S Zuari Agro Chemicals Ltd. Gao v. Rosaria Fernandes delivered by the Gao High Court reported in 1986 Lab.I.C. 300 and pointed out that the Conciliation Officer has no jurisdiction to quash the order of punishment as there was no malafide intention on the part of the Corporation and therefore, the order passed by the Conciliation Officer is illegal and and bad in the eyes of law, which requires to be quashed and set aside by this Court.

#. Learned advcoate Mr.J.S.Brambhatt appearing on behalf

of the respondent workman has submitted that initially the competent authority has imposed punishment in respect of the misconduct after issuing chargesheet and after completion of departmental inquiry vide order dated 31st January, 1991 imposing punishment of stoppage of two increments with cumulative effect. Against said punishment order, the respondent workman has filed departmental appeal before the appellate authority and after period of one year and two months, the appellate authority has exercised the review powers and issued review show cause notice on 2nd March, 1992. Against said review show cause notice, the respondent workman has submitted reply on 28th March, 1992 and thereafter on 24th December, 1992 personal hearing was given by the review authority and workman was examined before the reviewing authority. Thereafter, the reviewing authority has passed the dismissal order against the respondent workman on 11th May, 1993. Therefore, learned advocate Mr.Brambhatt has submitted that the reviewing authority has no power to enhance the punishment in pursuance of review show cause notice and in the instant case, the Reviewing Authority has not given any reason in support of his decision as to why the case was reviewed by the reviewing authority. Mr.Brambhatt has also submitted that against punishment order dated 31st January, 1991, departmental appeal was filed before the same authority and same was pending but while deciding the review proceedings, no decision was taken in the said appeal proceedings. Learned advcoate Mr.Brambhatt has submitted that the reviewing authority has exercised the review powers taking additional evidence while examining the respondent workman and accordingly, enhanced the punishment which is clearly beyond the scope and jurisdiction of the authority. Mr.Brambhatt has also submitted that there was no appeal filed by the department to the appellate authority against said punishment. He also submits that reply which has been filed and explanation which has been tendered by the respondent workman in review personal hearing but same has not been taken into consideration by the reviewing authority. He also submits that the reviewing authority has no power like an appellate authority and it amounts to revisional powers while exercising the reviewing powers and therefore, the reviewing authority has no powers to enhance the punishment. Mr.Brambhatt has also submitted that under Clause [9] of the S.T. Discipline and Appeal Procedure, subsequently the powers of enhancement of punishment has not been provided and therefore, order passed by the reviewing authority is without jurisdiction, contrary to the procedure and therefore, this aspect has been rightly examined by the

Conciliation Officer and rejected the approval application. Mr.Brambhatt has also submitted that the conciliation officer has rightly appreciated the evidence led in the departmental inquiry and come to the conclusion that all the documents relied on by the reviewing authority, has not been supplied to the respondent workman and finding also not given to the respondent workman and order passed by the reviewing authority is contrary to the principles of natural justice without jurisdiction and inquiry which was initiated is vitiated as observed by the conciliation officer. Thus, the conciliation officer has jurisdiction under Section 33-2-b of the Industrial Disputes Act, 1947. Mr.Brambhatt has relief on two decisions of the Apex Court in case of Lalla Ram v. D.C. M. Chemical Works reported in AIR 1978 SC 1004 and 1969 [2] LLJ 377. Relying on these two decisions, Mr.Brambhatt has submitted that the conciliation officer has also having powers to examine the validity of the finding; whether it is based on legal evidence or not. Therefore, the conciliation officer has rightly appreciated the merits and come to the conclusion that order of dismissing the respondent workman by reviewing the authority is without jurisdiction and therefore, the conciliation officer has not committed any error while rejecting the approval application and therefore, no interference is required by this Court while exercising the powers under Article 226 and 227 of the Constitution Of India.

#. I have considered submissions of the learned advocates for the parties. S.T. Corporation has enacted Discipline Appeal Procedure for Gujarat State Road Transport Corporation employees under Service Regulations, 1980 of G.S.R.T.C Service Regulations. Under the said procedure, classification of misconduct has been prescribed. The act of the misconduct and minor lapses and delinquences. A detailed procedure from chargesheet to dismissal has also been prescribed under the procedure. The relevant clause [9], wherein the powers has been exercised by the concerned authority. Punishment provided under Clause [7], against which, appeal is available to the concerned employee under Clause [8]. The relevant clause [9] and therefore, certain important Clauses are quoted as under :-

"9. The Appellate Authority may, suo moto call for the enquiry papers and review the decision in any case as it may deem fit."

Another relevant clause [14] runs as under :-

"14. The authority to whom an appeal lies under these provisions shall decide it himself and shall pass such orders on the appeal as he thinks fit, after verifying whether the prescribed procedure has been followed by the Enquiry Officer and whether there was any material irregularity likely to vitiate the decision of the Competent Authority or the 1st Appellate Authority in the case of a second appeal. In case the Appellate Authority feels that there has been such an irregularity it may direct the Competent Authority [or the 1st Appellate Authority in case of a second appeal] to make up the irregularity and to submit the case to the Appellate the Authority."

Clause 20 says that;

"20. The Appellate Authorities appointed by the Corporation for hearing appeals and reviewing cases are those shown in Schedule "C". Any officer higher than the prescribed Appellate Authority has inherent powers to call any case papers and review the decision or hear the appeal or direct any other authority to hear the appeal."

#. Bare perusal of Clauses 9, 14 and 20 which are relating to the powers of the reviewing authority reflects that under Clause [9], there is no power specifically given to the reviewing authority to enhance the punishment. To enhance punishment is penal powers which required to be specified under the Rules. It is very settled principles interpretation of statute that whenever penal power is required to be exercised by the authority, then, it must have specific mention in the particular Rules in question. Therefore, considering this aspect, powers under Clause [9] have been specifically conferred on the appellate authority to suo moto call for the enquiry papers and review the decision in any case as it may deem fit. The powers to review decision cannot be impliedly understood as powers to enhance the punishment. The powers of review like revisional authority powers and not appellate powers. Therefore, there is limitation of powers of revisional authority and the authority at the most can remand the matter to the competent authority in case if any irregularity committed by the competent authority but he cannot enhance the punishment under the guise of reviewing decision. The powers to review the decision cannot be impliedly understood as powers to enhance the

punishment. The powers of review is revisional powers and not the powers like appellate authority. However, the appellate authority is empowered to enhance the punishment and therefore, in absence of specific provisions, reviewing authority cannot enhance the punishment. Under the S.T. Discipline and Appeal Procedure, no specific powers are given to the reviewing authority to enhance the punishment imposed by the competent authority. Therefore, in the present case, the Divisional Controller being appellate authority has reviewed the decision of the competent authority and by way of decision in review, enhanced the punishment and dismissed the respondent workman from service. Therefore, considering the relevant Clause [9], according to my opinion, reviewing authority has no powers under the guise to review the decision to enhance the punishment because no specific provision is made in S.T.Discipline and Appeal Procedure and accordingly, the review authority while reviewing the decision, is not entitled to enhance the punishment. Therefore, the order of dismissal passed by the reviewing authority, is without jurisdiction. This aspect has been taken into account by the Conciliation Officer that reviewing authority has passed the order which is without jurisdiction.

#. This aspect has been considered by the Bombay High Court in case of MAHARASHTRA STATE ROAD TRANSPORT CORPORATION V. R.D.TOPLEWAR AND ANTOHER reported in 1987 LAB.I.C. 789. The Maharashtra State Road Transport Corporation is also having similar Rules and Procedure, wherein also Clause [9] is pertaining to the review and that Clause [9] itself has been interpreted by the Bombay High Court. The relevant observations made in para-13 to 17 are referred as under :-

"13. Proceeding now to the merits of the controversy, the first question which arises for consideration is the scope of review proceedings under Cl.9. Discipline and Appeal Procedure. The scheme of the said Discipline and Appeal Procedure would show that Cl. 7 provides for punishment to be meted out for the misconduct committed by the employees. It also provides whether the orders imposing punishment are appealable or not. Clause 8 enables an employee to file an appeal to the appellate authority prescribed in Schedule "C" or "D" of the said Discipline and Appeal Procedure. In cases of dismissal discharge, termination of services, reduction to lower posts, withholding of

increment for a specific period and suspension by way of punishment, a second appeal is laid down under Clauses 10,14 and 15 of the said Discipline and Appeal Procedure.

14. Clauses of the Discipline and Appeal Procedure provides that the appellate authority may suo motu call for the enquiry papers and review the decision in any case as it may deem fit. It is this provision which calls for interpretation in this case. The learned counsel for the petitioner has urged that the expression " review the decision in any case as it may deem fit " would show that the whole case is open before the appellate authority in review and after reappreciating the whole evidence on record by itself it can come to its own conclusion and impose any punishment higher or lower other than the punishment imposed by the competent authority. The submission in other words is that the whole matter is open before the appellate authority as in the case of appeal. The further submission, refereeing to sub-cl.[c] of Cl.10. Discipline and Appeal Procedure is that when the appellate authority can consider whether the punishment is adequate or inadequate and when he is empowered thereunder to pass such Order as he thinks proper, it is open to the appellate authority to enhance the punishment in appeal.

15. In considering the scope of Cl. 9 , it is relevant to see that a right of appeal under Cl. 8 is conferred upon the delinquent employee aggrieved by the order of punishment against him. No right of appeal is provided to the department if the delinquent employee is acquitted in the departmental proceedings. In this context, the reason for enactment of Cl. 9 Discipline and Appeal Procedure is clear. Since no appeal is provided to the department, a power of review to the appellate authority is provided under Cl. 9 But it would not follow from the same that the power of review can be equated to the power of appeal. A proper reading of Cl. 9 would show that although the word " review" is used, in fact, it is the power in the nature of a revision as normally understood in law, which has a different scope from the appellate power.

16. Normally, the expression " review" is

used when the same authority is empowered to reopen its own order. However, under Cl. 9 the power of review is conferred upon a different and higher authority. Further, the language used in Cl.9 namely, " the Appellate Authority may suo motu call for the enquiry papers" would show that the power intended to be conferred upon the appellate authority is in the nature of a revisional power. It may be seen that the competent authority to take disciplinary action against the employees of the petitioner Corporation is well conversant with the rules and procedure in the Corporation and it is, therefore, understandable that when, after considering thee material before him, the competent authority comes to a conclusion that the delinquent employee should be acquitted, such an order of acquittal should be reopened by the higher departmental authorities in rare cases such as when the procedure followed by the competent authority or the enquiry officer is not proper or is against the principles of natural justice or when some material irregularities committed by the competent authority in arriving at his decision. It is, therefore, that a power of review which as discussed above, is a revisional power conferred upon the appellate authority.

17. In regard to the appellate authority, Cl.14 Discipline and Appeal Procedure shows that the said authority can pass Orders on the appeal as it thinks fit after verifying whether the prescribed procedure has been followed by the Enquiry Officer and whether there was any material irregularity likely to vitiate the decision of the competent authority. In my view, considering all the above circumstances, the power conferred under Cl.9 Discipline and Appeal Procedure, cannot be equated with the power in appeal under the said Discipline and Appeal Procedure. Even treating it as a review as it mentioned in the said Cl.9 on the identical phraseology used in the Rent Control Order, this Court in the case of Tukaram Nathuji Vs. Dayalnath Dudhanath, reported in 1985 Mah LJ 37 [AIR 1986 Bom 109] has laid down that in review proceedings it is not open to the Court to reappreciate the evidence on record and to interfere with the order under review only because some other view is possible on the basis

of the material on record. In this view of the matter also, the jurisdiction of the reviewing authority under Cl.9 Discipline and Appeal Procedure is limited and cannot be equated with the appellate jurisdiction. Since I am holding in the facts and circumstances of the instant case that the appellate authority was in error in interfering in his review jurisdiction under the aforesaid 9, I do not think it necessary to consider the question whether or not in appeal or in review it is open to the appellate authorities to impose higher punishment upon the delinquent employee.

#. This aspect of review has also been considered by Allahabad High Court in case of JITENDRA PAL SINGH BHADAURIA V. THE CHAIRMAN AND MANAGING DIRECTING AND REVIEWING AUTHORITY ALLAHABAD BANK AND OTHER reported in 1998 [78] FLR 816. The Division Bench of the Allhabad High Court has observed that as the reviewing authority was enhancing the penalty the law requires consideration of the grounds in reply and giving reasons in the final order in such cases. Had there been concurrence as regards finding and penalty, detailed reason would not have been required. But, in the present case, as enhancement of penalty has been resulted, the reviewing authority was required to give reasons after dealing with the contentions of the petitioner made in his reply to show cause notice and therefore, in absence of such reasons, we are of the opinion that requirement of law has not been satisfied and the order is liable to be quashed. Relevant observations made in para-9 to 13 are reproduced as under :-

"9. The law in this connection has also been decided in the case of State Bank of Bikaner & Jaipur and others v. Prabhu Dayal Grover, wherein the provision of the concerned service Regulations were considered and it was held that "when the Disciplinary Authority agrees with the findings of the Enquiry Officer and accepts the reasons given by him in support of such findings, it is not necessary for the punishing authority to reappraise the evidence to arrive at the same findings."

10. We find that the law has also been considered in this respect in case of S.N.Mukherjee V. Union Of India, and the relevant finding therein runs as follows :-

"The need for recording of reasons is greater in a case where the order is passed at the original stage. The appellate or revisional authority, if it affirms such an order, need not give separate reasons if the appellate or revisional authority agrees with the reasons contained in the order under challenge."

11. After considering the aforesaid view, we are of the opinion that the law in this respect has already been settled that giving of reasons is an essential element of orders of administrative authority and right to reason is indispensable part of sound system of judicial review. Even the appellate authority when reverses the order of trial authority, is required to give sufficient reason showing the reasons of reversing the earlier order. But, in case the appellate authority or any subsequent authority concurs with the findings of the order impugned before it and it affirms the said order, it need not give separate reasons.

12. In the present case show cause notice had been issued giving reasons as to why power of review was being proposed to be exercised. It appears that the petitioner submitted his reply to the said show cause notice and a copy of the said reply has been annexed at Annexure No.26 to the writ petition. A perusal of the said reply indicates that the petitioner has taken various objections in his reply as regards review proposing imposition of penalty of dismissal which means penalty was being enhanced.

13. The impugned order at Annexure No.27 to the writ petition does not clearly give the reasons dealing with the said objections taken in the reply filed by the petitioner to show cause notice in the review proceeding. As the reviewing authority was enhancing the penalty the law requires consideration of the grounds in reply and giving reasons in the final order in such cases. Had there been concurrence as regards fining and penalty, detailed reason would not have been required. But, in the present case, as enhancement of penalty has been resulted, the reviewing authority was required to give reasons after dealing with the contentions

of the petitioner made in his reply to show cause notice."

#. It is also necessary to note one more aspect that against punishment of stoppage of two increments with cumulative effect imposed by the competent authority on respondent workman, the workman had preferred appeal before the appellate authority who is also reviewing authority. Said appeal was heard by the appellate authority but the appellate authority has not given any decision in respect of the said appeal and it was not informed that whether the appeal filed by the respondent workman is rejected or allowed by the appellate authority. In absence of the decision in appeal, if during the proceedings of the appeal or while deciding the appeal, if decision of review is taken then, it amounts to putting the workman in such situation, as he approached the appellate authority with request to set aside the punishment order, he could not have expected that while approaching the appellate authority by way of filing appeal, he will put in adverse situation that why the punishment in question should not be enhanced. This was not expected by the respondent workman when he approached to the appellate authority by filing appeal. Such course which has been adopted by the review authority while deciding the appeal which is contrary to law and principles of natural justice. This aspect has been examined by the Apex Court in case of MAKESHWAR NATH SRIVASTAVA V. THE STATE OF BIHAR AND OTHERS reported in AIR 1971 SC 1106, wherein the Apex Court has held that the powers to review can be exercised by the revisional authority when no appeal was filed by the other side. Once the appeal is filed against the said order, the powers of review can not be exercised while deciding the appeal, decision of the review itself is not proper and legal. The relevant observations made in para-11 are referred as under :-

"11. In its order, dated January 31, 1963, the Government, no In its order, dated January 31, 1963, the Government, no doubt, has referred to rr. 8 5 1 (b) and 8 5 3 A as being the rules under which it purported to act for the purpose of making the impugned order of dismissal. Rule 851 (b), as already pointed out, however, confers no such power. As regards r. 853-A, it is neither set out in the impugned order, nor in the statement of case of the respondent-State. We called for its production, or even its copy but counsel for the State expressed his inability to produce the same. Further, counsel for the

> appellant told us that even if r.853 A had been framed, it cannot operate because so far it has, not been published in the official gazette as required by S. 46(2). Counsel for the State was not in a position to throw any light whether the said rule has been framed or not and if framed whether it was notified in the Gazette. In these circumstance he could not rely upon that rule to sustain the order of dismissal passed by the Government. We have, therefore, to go upon r. 851 (b), which clearly does not empower the Government to pass an order such as the one impugned by the appellant on the ground of its revisional power or any such similar power under s. 3 of the Act. In the absence of any other provision of law or any rule conferring on the-State Government the, power to pass an order of dismissal in exercise of its revisional power or power of general superintendence, the general principle must prevail, namely, that an appellate authority in an appeal by an aggrieved party may either dismiss his appeal or allow it either wholly or partly and uphold or set aside or modify the order challenged in such appeal. It cannot surely impose on such an appellant a higher penalty and condemn him to a position worse than the one he would be in if he had not hazarded to file an appeal. Since under r. 851 (b) an appeal to the Government has been provided for and the Government had under that rule the appellate authority to dispose of appeals filed before it against the original order passed by the Ins-pector-General, it could not resort to any general power of superintendence except in cases where there is a provision conferring such a power in addition to its appellate authority and in the manner envisaged by such a provision."

#. In view of above observations made by the Bombay High Court, Allahabad High and the Apex Court, if the facts of the present case are examined in light of above observations referred above, it reflects that on 26th October, 1990 the respondent wrokman was working as Conductor on route from Devgha to Bilimora, at that time, his bus was checked by the checking staff, it was found that out of nine passengers travelling from Taliyara to Damdachha, from one passenger, fare was collected and no ticket was issued and in S.T.Cash, Rs.62.65 was found excess. On the basis of the said incident that fare of Rs.1/- was recovered and not issued the tickets to the passenger and excess amount found from the cash and

accordingly report was made against the workman on 29th December, 1990 and thereafter, chargesheet was served on 5th January, 1991 which was replied by the respondent workman on 15th January, 1991 and thereafter on 29th January, 1991, departmental inquiry was initiated and reporter was examined and ultimately on 31st January, 1991, the competent authority has imposed punishment of stoppage of two increments with cumulative effect. Thereafter, review show cause notice dated 2nd March, 1992 was served on the respondent workman which was replied on 28th March, 1992 and then persona hearing was fixed by the review authority on 24th December, 1992 and thereafter, dismissal order has been passed. In light of these undisputed facts, it is also pertinent to note that whether the reviewing authority is entitled to consider additional evidence before him. The answer is, the review can be considered on the basis of evidence which was led before the competent authority. The reviewing authority can not consider the additional evidence which was taken up by the reviewing authority. In the present case, the reviewing authority has examined the respondent workman in review proceedings and its own evidence has been recorded by the reviewing authority. Therefore, while reviewing the decision, additional evidence cannot be taken into account and on the basis of that, punishment cannot be enhanced. The dismissal order has been produced by the petitioner Corporation which is on pag.13 - Annexure-B. In the dismissal order, the reviewing authority has mentioned that in respect of First Appeal against the punishment order, the respondent workman was heard personally and thereafter, it was found that looking to the gravity of misconduct, punishment which was imposed by the competent authority was not adequate and therefore, case was reviewed. This is clear admission on the part of the reviewing authority that decision of the review has been taken in appeal proceedings. Such decision which has been taken in the appeal proceedings, without taking decision whether the appeal is rejected or allowed, such decision is contrary to the law. The reply was submitted by the respondent workman on 28th March, 1992 but the reviewing authority has not given any reason as to why the reply given by the respondent workman has not been taken into consideration and no reason has been given that defence which has been taken or contention which has been raised, not accepted by the reviewing authority. Simply in the dismissal order, the reviewing authority has referred that in reply submitted by the respondent workman, in which, there is no clarification and therefore, this dismissal order is passed but not to believe the defence or not to accept the contention which has been raised by the workman in

response to the show cause notice, no reason has been assigned. Therefore, since the dismissal order passed by the reviewing authority without assigning any reason, the conciliation officer has been rightly rejected the approval application.

##. It is pertinent to refer one more aspect that the competent authority has imposed punishment of stoppage of two increments with cumulative effect, against this punishment, appeal was filed by the workman but no decision was given by the appellate authority and that punishment was remained continued even at the time of issuing review show cause notice. It is duty of the reviewing authority that once he takes decision to review the case, then he should have to set aside the punishment in question but such punishment was not set aside at the time when decision was taken in review and therefore, till the decision of the dismissal, punishment of stoppage of two increments remained in existence and therefore, it can be said that the respondent workman has been ordered to suffer two penalties, which amounts to double penalty to the respondent workman in respect of one misconduct. It is also necessary to note one more aspect that there is settlement between the Corporation and the recognised Union that powers of review can be exercised by the reviewing authority within period of one year. In the present case, punishment order of stoppage of two increments is dated 31st January, 1991 and review show cause notice issued by the reviewing authority dated 24th March, 1992. Therefore, powers of review has been exercised by the reviewing authority after period one year and two months. It was settlement arrived at between the Corporation and the recognised Union dated 18th April, 1968 [Item No.17[c]] which provides that it was agreed by the Corporation that "default cases finalization by the competent authority can be reviewed by the appellate or review authority not later than a year from the date of issue of punishment order or order of first appellate authority as the case may be", provided that reviewing a default case at the date later than a year in exceptional or peculiar circumstances provided prior permission of the Chairman and General Manager / Dy.General Manager will be necessary". In the facts and circumstances of the case, review show cause notice has been given to the respondent workman after period of one year and two months but whether such permission was placed on record or not, no such averments made in the petition or even before the conciliation officer that such permission was given by the higher authority. Therefore also, powers of review have not been exercised within reasonable time as agreed by the

Corporation in the settlement. Said settlement arrived by the petitioner Corporation and the Union under Section 12[3] of the Industrial Disputes Act, 1947 which is binding to the corporation.

##. It is also necessary to consider the Circular issued by the State Road Transport Corporation while in case of review while exercising the powers under Clauses 9 and 20 of the Discipline and Appeal Procedure lay down that the Appellate Authority or any officer higher than the appellate authority can call for any case papers on which the Competent Punishing Authority has taken action, review the decision and enhance the punishment. It sometimes happens that this process of review and final decision takes time during which the punishment already inflicted by the Competent Authority is continued. In case the reviewing authority enhances the punishment without reference to the punishment already current it will have effect of giving two punishments for the same offence. This Circular issued by the Gujarat State Road Transport Corporation on date 14th July, 1969. Similarly, in present case, when the review show cause notice has been given on 24th March, 1992, at that time, punishment in question imposed by the competent authority, has not been set aside. Therefore, from 2nd March, 1992 till the date of dismissal dated 11th May, 1993, punishment dated 31st January, 1991 of stoppage of two increments was continued and the respondent workman has suffered two penalties at a time and therefore, said decision of reviewing the decision by reviewing the authority is contrary to the Circular also.

##. Now the question which has been raised by learned advocate Mr.Hasit Joshi on behalf of the petitioner in respect of the jurisdiction of the Conciliation Officer that under Section 33[2][b], the conciliation officer has no power to examine the merits to set aside the order of dismissal and to reappreciate the evidence and therefore, under Section 33-2-b of the Act, the conciliation officer has committed error in rejecting the approval application. In support of this contention, Mr.Hasit Joshi has relied on decision of the Gao High Court reported in case of M/S ZUARI AGRO CHEMCIALS LTD. GAO V. ROSARIO FERNADES reported in 1986 Lab.I.C. 300 and put emphasis on observations made in para-19 and 28 of the judgment, which are referred as under :-

"19. Referring to the impugned order, Mr.Gaitonde suggest that the same is liable to be quashed in the present proceedings, because without either refusing or granting the approval

sought by the employer the Tribunal has in excess of its jurisdiction quashed the order of dismissal as against the workman and has substituted a punishment of its own. In this connection, it must be stated that the Tribunal formally did not either pass order granting or refusing the approval of dismissal of the workman, but after setting aside the order of dismissal held as under :-

" ..... the order of dismissal passed by the employer against the workman cannot be sustained and hence it is herby set side. For the misconducts found proved aginst him, he is hereby punished with withdrawal of 4 increments during one year for all the misconducts committed by him which are subject matter of the inquiry. The workman to be deemed as in continuous service till his reinstatement and entitled to full backwages."

It is now argued by Mr.Gaitonde that the Tribunal could not have made such order of substituting a punishment for the one that is given by the employer and all the more so when the Tribunal itself has come to hold that considering the misconduct proved the workman deserved the punishment of dismissal. Turning to the various authorities to which reference has been made above, which speaks of true scope and ambit of S.33, it is clear to me that the tribunal is empowered either to grant approval or refuse to grant approval and that too by addressing itself to only few questions. To put it tersely, the question is whether the employer has made out a prima facie case whether the inquiry conducted has followed the principles of natural justice and whether there is any unfair labour practice followed in the matter of victimization. Therefore, even if the tribunal were to come to a finding that there was victimization in the present case, all that the Tribunal could do was to refuse to grant approval and nothing more. One fails to understand how the Tribunal has committed the error of setting aside the order of dismissal and substituted a punishment of stoppage of four increments in a year and that way disposed of an application under S.33[2][b] of which the true scope is highly limited. Even assuming the Tribunal has in substance refused

approval sought for by the employer, then the tribunal obviously could not substitute the punishment for that falls outside S.33[2][b]. This type of power falls under different provisions of the Industrial Disputes Act with which the Tribunal was obviously not concerned presently in the proceedings.

28. Next is the decision of the Patna High Court in South Kujama Colliery V. Central Government Industrial Tribunal, Dhanbad, reported in [1967] 2 Lab LJ 193. In this case it was held that the Tribunal has powers to interfere with the quantum of punishment where it finds that the management has been actuated by mala fides, unfair labour practice or victimization. This was a clear case where there was a discrimination between two sets of employees placed in similar situation. But, then it must be seen again that this is a different case as the matter before the Tribunal was under S.10[1][d], Industrial Disputes Act, and not a case under S.33[2][b] and on facts distinguishable from the present case. In Lalla Ram V. Management of DCM Chemicals Works reported in AIR 1978 SC 1004, the Supreme Court has laid down test in the matter of jurisdiction of the Industrial Tribunal in proceedings under S.33[2][b] in the matter of inquiry and they are :-

"[i] Whether a proper domestic enquiry in accordance with the relevant rules / standing orders and principles of natural justice has been held; [ii] whether a prima facie case for dismissal based on legal evidence adduced before the domestic tribunal is made out; [iii] whether the employer had come to a bona fide conclusion that the employee was guilty and the dismissal did not amount to unfair labour practice and was not intended to victimize the employee, regard being had to the position settled by the Supreme Court that though generally speaking the award of punishment for misconduct under the Standing Orders is a matter for the management to decide and the Tribunal is not required to consider the propriety or adequacy of the punishment or whether it is excessive or too severe yet an inference of mala fide may in certain cases be drawn from the imposition of unduly harsh, severe, unconscionable or schokingly disproportionate punishment; [iv] whether the

employer had paid or offered to pay wages for one month to the employee and [v] whether the employer had simultaneously or within such reasonably short time as to form part of the same transaction applied to the authority before which the main industrial dispute is pending for approval of the action taken by him."

In so far as the matter of punishment is concerned, it has been clearly laid down in one of those tests that the Tribunal can certainly go into the question of the award of punishment to se whether it is mala fide or an unfair labour practice has been followed by the employer but only when the Tribunal comes to hold that imposition of the penalty is unduly harsh, severe and unconscionable or shockingly disproportionate and if the Tribunal comes to hold that the punishment is not falling in any of the predicates then the Tribunal cannot go into the question as if trying the case as an appellate forum."

##. In para-19 of the aforesaid Judgment, the Gao High Court has considered the question that when decision on approval application either refusing or granting the authority, has set aside dismissal order. Naturally, the conciliation officer or any other authority acted under Section 33[2][b] of the Act, has no power to set aside the punishment order. He can only pass the order either to refuse or to grant the approval application. This is not the case in the present matter. So far as the observations made in para-28 are concerned, wherein the Gao High Court has relied upon the decision of the Apex Court in case of Lalla Ram v. DCM Chemical Works reported in AIR 1978 SC 1004 principle which has been laid down by the Apex Court that tribunal while exercising the powers under Section 33[2][b] of the Act, is not entitled to consider the propriety or penalty of punishment whether it is excess or whether it is mala fide or an unfair labour practice has been followed by the employer but only when the tribunal comes to hold that imposition of the penalty is unduly harsh, severe and unconscionable or schockingly disproportionate and if the Tribunal comes to hold that the punishment is not falling in any of the predicates then the Tribunal cannot go into the question as if the trying the case as an appellate forum. In case of Lalla Ram V. Management of DCM Chemicals Works reported in AIR 1978 SC 1004, the Supreme Court has laid down test in the matter of jurisdiction of the Industrial Tribunal in proceedings

under S.33[2][b] in the matter of inquiry and [i] Whether a proper domestic enquiry in accordance with the relevant rules / standing orders and principles of natural justice has been held; [ii] whether a prima facie case for dismissal based on legal evidence adduced before the domestic tribunal is made out; [iii] whether the employer had come to a bona fide conclusion that the employee was guilty and the dismissal did not amount to unfair labour practice and was not intended to victimize the employee, regard being had to the position settled by the Supreme Court that though generally speaking the award of punishment for misconduct under the Standing Orders is a matter for the management to decide and the Tribunal is not required to consider the propriety or adequacy of the punishment or whether it is excessive or too severe yet an inference of mala fide may in certain cases be drawn from the imposition of unduly harsh, severe, unconscionable or schokingly disproportionate punishment; [iv] whether the employer had paid or offered to pay wages for one month to the employee and [v] whether the employer had simultaneously or within such reasonably short time as to form part of the same transaction applied to the authority before which the main industrial dispute is pending for approval of the action taken by him. The Apex Court has also observed that if the domestic inquiry suffers from any defect or infirmity, the labour court will have to find out on its own assessment of the evidence adduced before it, whether there was any jurisdiction to pass dismissal order and if it is so found, it will grant approval of the order of dismissal which would also relate to back date when the order was passed.

##. It is also necessary to note that the conciliation officer while exercising the powers under Section 33[2][b] of the Act, is entitled to exercise to examine the validity of the finding whether the same is based on legal evidence or not. This aspect has been considered by the Apex Court in case of Central Bank of India Limited, New Delhi vs. Prakash Chadn Jain reported in 1969 [2] LLJ pg.377. Relevant Head Note portion is referred as under :-

"The appeal was preferred against the order of the industrial tribunal rejecting approval sought for by the appellant bank under S.33 [2][b] of the Industrial Disputes Act. The acts of misconduct levelled against the workman were alleged to have fallen under Para.521-4 [J] of the Sastri award. The tribunal, when dealing with the application for approval, held that the

enquiry held by the enquiry officer was fair, and was not vitiated by any irregularity or unfairness but refused to accord approval on the ground that the findings rendered by the enquiry officer were perverse and were not based on evidence inasmuch as most of the findings were the result of mere conjecture of the enquiry officer.

Rejecting the contention of the counsel for the appellant - bank that the tribunal, refusing to accord approval and in disregarding the findings recorded by the enquiry officer, exceeded its jurisdiction conferred by S.33[2][b] of the Act and the tribunal having once held that the enquiry was fair, it had not jurisdiction to go into the correctness of the findings of the enquiry officer as an appellant Court, held that the tribunal can disregard the findings given by the enquiry officer in an application under S.33[2][b] of the Industrial Disputes Act only if the findings are perverse. The test of perversity is that the findings may not be supported by legal evidence. Yet another case of perversity is that when the findings are such which no reasonable person could have arrived at on the basis of the materials before him. Though in regard to certain elements of the acts of misconduct, the tribunal erred in assessing the perversity of the evidence adduced before the enquiry officer at the domestic enquiry, and though such an enquiry officer was not bound to observe the technical rules of evidence, held in the instant case that substantive rules of evidence which would form part of principles of natural justice have been ignored by the enquiry officer, when he based his findings on hearsay evidence.

It is true that in various cases it has been held that domestic tribunals like an inquiry officer are not bound by the technical rules about the evidence in the Indian Evidence Act but it has nowhere been laid down that even substantive rules which would form part of principles of natural justice also could be ignored by the domestic tribunals. he principles that a fact sought to be proved must be supported by statements made in the presence of the person against whom enquiry is held and that the statements made behind the person charged are not

to be treated as substantive evidence is one of the basic principles of natural justice which cannot be ignored on the mere ground that domestic tribunals are not bound by the technical rules of procedure contained in the Evidence Act. A domestic tribunal would not be justified in recording its finding on the basis of hearsay evidence without having any direct or substantive evidence in support of such findings. In other words, the findings recorded by the enquiry officer must be supported by legal evidence. The evidence should consist of statements made in the presence of the workman in the presence of the workman charged and exception is envisaged where the previous statements could be used after giving copies of the statements well in advance to the workman charged but with further qualifications that previous charged must be affirmed as truthful in a general way when the witness is actually examined in the presence of the workman charged.

Applying the above principles and on merits, held that the findings of the enquiry officer were not based on any legal evidence in regard to the two charges leveled against the workman even though partly the first of the charges could be held to be proved."

##. In light of above observations made by the Apex Court in case of Lalla Ram V. DCM Chemical Works and the Central Bank of India, now this Court examines the order passed by the Conciliation Officer. Before the Conciliation Officer, hearing was fixed for submitting reply and documentary evidence on 30th June, 1993 to 1st November, 1993 and thereafter reply was submitted by the respondent workman and submission made by the petitioner. According to the petitioner, after considering the evidence led in the departmental inquiry and decision taken by the competent authority, punishment which was imposed by the competent authority looking to the gravity of misconduct which was found to be inadequate and therefore, powers of review exercised by the reviewing authority and therefore, there was no victimization and mala fide on the part of the petitioner. Thereafter, the conciliation officer has examined the submissions made by both the parties. The conciliation officer has come to the conclusion that the petitioner has not produced all the relevant records before the conciliation officer. Not only that, no record has been produced of the proceedings carried out by the reviewing authority. Past

record was produced by the petitioner. The conciliation officer has come to the conclusion that the respondent workman who had collected fare of Rs.1/- from one passenger whose statement was recorded by the checking Inspector which was objected by the respondent workman but despite of this, the passenger concerned was not examined in departmental inquiry and his name was not supplied to the workman concerned. Therefore, the submission made by the petitioner Corporation to have believed the statement of the passenger who was not examined in departmental inquiry, cannot be accepted. He also examined the question that at the time when the respondent workman had started the duty, how much cash he was having, such aspect was not taken into account by the petitioner Corporation and what were the Rules, for that and therefore, excess amount which was found from the respondent workman, for that, there was no clarification whether that amount was with him from the starting point of the duty or whether it was found subsequently take by the respondent workman from the passengers. The conciliation officer has also come to the conclusion that the punishment of dismissal is mala fide and victimization, which amounts to unfair labour practice because looking to the misconduct of collecting a fare of Rs.1/-, punishment of dismissal is totally harsh and disproportionate. The conciliation officer has also considered that the respondent workman who likely to be retired within short period and therefore, considered it fit to impose punishment of dismissal is not warranted, for that, the conciliation officer is having powers as per the ratio laid down by the Apex court in case of Lalla Ram v, DCM Chemical Works reported in AIR 1978 SC 1004. The conciliation officer has also come to the conclusion that the reviewing authority cannot enhance the punishment, at the most, he can review the decision either to confirm the punishment or to refuse the punishment but he cannot enhance the punishment while exercising the powers of review. This aspect has been taken into consideration by the conciliation officer to the effect that the reviewing authority has no powers to enhance the punishment. He also considered that past record which was relied upon by the reviewing authority for passing the dismissal order, such past record was not communicated to the respondent workman along with review show cause notice and no explanation was called for from the respondent workman in respect of past record. Therefore, once the past record was not made available to the respondent workman, then such past record cannot be considered by the reviewing authority against the respondent workman. The Conciliation officer has also considered one more aspect that after receiving reply

from the respondent workman against the review show cause notice, no further communication was made with the respondent workman disclosing that whether the reply of the workman has been accepted or not, nor any reason or explanation reflects either from dismissal order and no finding has been given prior to dismissal order and therefore, it amounts to denial of principles of natural justice. Thus, the conciliation officer has rightly come to the conclusion that the order passed by the reviewing authority is discriminatory and arbitrary as finding is vitiated and the reviewing authority has no powers to enhance the punishment when the appeal was pending and no decision in pending appeal is taken but on the contrary, during the course of hearing of appeal, decision of the review has been taken which itself is contrary to the law and ultimately the conciliation officer has rejected the approval application.

##. Considering the entire order under challenge passed by the conciliation officer, according to my opinion, the conciliation officer has rightly rejected the approval application after applying proper mind and also assigned cogent reasons in support of his conclusion and as such, no error either of jurisdiction or procedural irregularity has been committed by the conciliation officer which, in any way, requires for interference of this Court while exercising the powers under Article 226 and 227 of the Constitution. Therefore, this Court also in full agreement that once the dismissal order is found without jurisdiction and for that, reviewing authority has no powers to enhance the punishment, then the order of dismissal is baseless, perverse and arbitrary without jurisdiction and the same has been rightly rejected approval application by the conciliation officer.

##. However, it is settled position of law that the powers of this Court are very limited while examining the legality and validity of the award passed by the labour court. The view taken by the Apex Court in Indian Overseas Bank v. I.O.B. Staff Canteen Workers' Union and Another reported in 2000 SCC [Labour and Service] pg.471, the Apex Court has held that while exercising the powers under Article 226 and 227 of the Constitution, interference with pure finding of fact and Reappreciation of the evidence is held to be impermissible. The High Court does not exercise appellate jurisdiction under Article 226. Even insufficiency of evidence or that another view is possible, it is held that no ground to interfere with the findings of the Industrial Tribunal. Recently also, the Apex Court has considered this aspect in case of SUGARBAI M. SIDDIQ AND OTHERS V. RAMESH S.

HANDKARE reported in 2001 [8] SCC pg.477, the Apex Court has held that scope of powers of High Court is concerned not with the decision of the lower court / tribunal but with its decision-making process. High Court must ascertain whether such Court or tribunal had jurisdiction to deal with a particular matter and whether the order in question is vitiated by procedural irregularity, then only High Court can interfere with, otherwise, not.

##. In view of above observations of Apex Court and considering the jurisdiction of this Court while exercising the powers under Article 226 and 227 of the Constitution, so also the totality of the facts and circumstances of the case, according to my opinion, no error either of jurisdiction or procedural irregularity has been committed by the conciliation officer which, in any way, requires for interference of this Court while exercising the powers under Article 226 and 227 of the Constitution, hence, there is no substance in the petition filed by the petitioner - S.T.Corporation and the same is rejected accordingly. Rule discharged. Ad-interim relief, if any, stands vacated.

##. Learned advocate Mr.Hasit Joshi for petitioner Corporation has requested this Court to extend the ad-interim relief which was granted by this Court. However, considering the fact that order passed by the conciliation officer has been challenged by the petitioner by way of this petition and pursuant to the order passed by this Court, the respondent workman remained out of job since 1993 but when this Court has finally upheld the order of conciliation officer rejecting the approval application, in such situation, ad-interim relief granted by this Court vide order dated 19th December, 1994 cannot be extended any more and hence, request of learned advocate Mr.Hasit Joshi is rejected accordingly.

##. So far as, Special Civil Application No.446 / 1995 preferred by the workman is concerned, wherein the workman has prayed that the order dated 27th April, 1994 passed by the Conciliation Officer under the I.D.Act, 1947 at Valsad in Proceedings No.IDC / Misc. No.55 / 1993 shall be implemented forthwith. Today, this Court has confirmed the order rejecting the approval application while rejecting Special Civil Application No.13370 / 1994 and therefore, order of conciliation officer passed on 27th April, 1994 confirmed by this Court today requires to be implemented by the respondent Corporation. Fact remains that this Court has passed the ad-interim relief order staying the operation and

implementation of the order passed by the Conciliation Officer concerned the workman remained out of job since the date of dismissal i.e. 11th May, 1993 and more than eight years have passed.

##. To consider this aspect, in view of this Court, certain observations made by the Apex Court in para 14 and 15 in a recent decision of the Apex Court in case of Jaipur Z. S. B. V. Bank Ltd. Shri Ram Gopal Sharma reported in 2002 Lab.I.C. 513 are much relevant and therefore, the same are referred as under :-

"14. Where an application is made under Section 33[2][b], Proviso, the authority before which the proceeding is pending for approval of the action taken by the employer has to examine whether the order of dismissal or discharge is bona fide; whether it was by way of victimization or unfair labour practice; whether the conditions contained in the proviso were complied with or not, etc. If the authority refuses to grant approval obviously it follows that the employee continues to be in service as if order of discharge or dismissal never had been passed. The order of dismissal or discharge passed invoking Section 33[2][b] dismissing or discharging an employee beings an end of relationship of employer and employee from the date of his dismissal or discharge but that order remains incomplete and remains inchoate as it is subject to approval of the authority under the said provision. In other words, this relationship comes to an end dejure only when the authority grants approval. If approval is not given, nothing more is required to be done by the employee, as it will have to be deemed that the order of discharge or dismissal had never been passed. Consequence of it is that the employee is deemed to have continued in service entitling him to all the benefits available. This being the position there is no need of a separate or specific order for his reinstatement. But on the other hand, if approval is given by the authority and if the employee is aggrieved by such an approval, he is entitled to make a complaint under Section 33A challenging the order granting approval on any of the grounds available to him. Section 33A is available only to an employee and is intended to save his time and trouble inasmuch as he can straightway make a complaint before the very authority where the industrial dispute is

already pending between the parties challenging the order of approval instead of making efforts to raise an industrial dispute, get a reference and thereafter adjudication. In this view, it is not correct to say that even though where the order of discharge or dismissal is inoperative for contravention of the mandatory conditions contained in the proviso or where the approval is refused, a workman should still make a complaint under Section 33A and that the order of dismissal or discharge becomes invalid or void only when it is set aside under Section 33A and that till such time he should suffer misery of unemployment inspite of statutory protection given to him by the proviso to Section 33[2][b]. It is not correct to say that where the order of discharge or dismissal becomes inoperative because of contravention of proviso to Section 33[2][b], Section 33A would be meaningless and futile. the said Section has a definite purpose to serve, as already stated above, enabling an employee to make a complaint, if aggrieved by the order of the approval granted.

15. The view that when no application is made or the one made is withdrawn, there is no order of refusal of such application on merits and as such the order of dismissal or discharge does not become void or inoperative unless such an order is set aside under Section 33A, cannot be accepted. In our view, not making an application under Section 33[2][b] seeking approval or withdrawing an application once made before any order is made thereon, is a clear case of contravention of the proviso to Section 33[2][b]. An employer who doe not make an application under Section 33[2][b] or withdraws the one made, cannot be rewarded by relieving him of the statutory obligation created on him to make such an application. If it is so done, he will be happier or more comfortable than an employer who obeys the command of law and makes an application inviting scrutiny of the authority in the mater of granting approval of the action taken by him. Adherence to and obedience of law should be obvious and necessary in a system governed by rule of law. An employer by design can avoid to make an application after dismissing or discharging an employee or file it and withdraw before any order is passed on it, on its merits, to take a position that such order is not

> inoperative or void till it is set aside under Section 33A notwithstanding the contravention of Section 33[2][b] proviso, driving the employee to have recourse to one or more proceeding by making a complaint under Section 33A or to raise another industrial dispute or to make a complaint under Section 31[1]. Such an approach destroys the protection specifically and expressly given to an employee under the said proviso as against possible victimization, unfair labour practice or harassment because of pendency of industrial dispute so that an employee can be saved from hardship of unemployment."

##. Therefore, considering observations made by the Apex Court and keeping in mind the facts that the workman concerned remained out of job since 1993 and the matter is pending before this Court more than six years and therefore, some direction requires to be issued on the respondent Corporation. Therefore, the respondent Corporation requires to be directed to implement the order passed by the Conciliation Officer dated 27th April, 1994 passed in Approval Application No.55 / 1993 and as a result of reinstatement, the petitioner workman becomes entitled to full backwages with continuity of service with all consequential benefits as if the petitioner workman never dismissed from service and deemed to be in service all through out for the entire period.

##. However, learned advocate Mr.J.S.Brambhatt for petitioner workman submits that during pendency of the proceedings, the petitioner workman has already reached the age of superannuation and he has been retired. Therefore, it is directed to the respondent Corporation to implement the order passed by the Conciliation Officer dated 27th April, 1994 passed in Approval Application No.55 / 1993 and as a result of reinstatement, the petitioner workman becomes entitled to full backwages with continuity of service with all consequential benefits as if the petitioner workman never dismissed from service and deemed to be in service all through out for the entire period till the date of retirement and also grant all the retiremental benefits, within period of two months from the date of receiving the copy of this order.

Accordingly, SCA No.446 / 1995 stands allowed. Rule is made absolute to the aforesaid extent. No order as to costs.

The Civil Application No.849 / 1995 in SCA No.13370 / 1994 also stands disposed of accordingly.

Date : 4-4-2002 [H.K.Rathod, J.]

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